90-1126

No.

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1990

BARBARA J. NORMAN, JANICE H. ROBINSON, DONALD PAMON, HELIDA R. RICHARDSON, TOMMY BREWER, CHARLES W. ALEXANDER, DOROTHY C. HOGAN, WILL LAWRENCE, KENNETH G. HOPKINS, R. EUGENE PINCHAM, ROBERT E. PINCHAM, JR., ROBERT E. BROOKS, PERCY V. COLEMAN, VIVIAN D. STEWART-TYLER, JAMES A. DEANS, DINO F. McNEAL, MARY KING CRISS, DAVID T. PERSONS, MELLO SAM H. CLORA, JUDY MARIE HAWTHORNES, CHESTER LeSURE, CELIA DUNCAN, DON C. PASSMORE, JR., and BOBBIE J. SMITH,

Petitioners-Appellants,

vs.

DOROTHY REED, VALERIE A. SUTTON, PATTON L. FEICHTER, ERVIN S. RICKS, and DAVID BARRERA; STANLEY T. KUSPER, JR., AURELIA PUCINSKI and ERNESTO D. BORGES constituting THE COOK COUNTY OFFICERS ELECTORAL BOARD; STANLEY T. KUSPER, individually and as CLERK OF COOK COUNTY, ILLINOIS; ARNETTE HUBBARD, RAYMOND JAGIELSKI and MICHAEL HAMBLET constituting the CHICAGO BOARD OF ELECTION COMMISSIONERS,

Respondents-Appellees.

PETITION FOR WRIT OF CERTIORARI TO THE ILLINOIS SUPREME COURT

R. Eugene Pincham
9316 S. Michigan Ave.
Chicago, Illinois 60619
(312) 568-7927

Robert E. Pincham, Jr.
100 W. Monroe, Suite 913
Chicago, Illinois 60603
(312) 782-0100

Nathaniel R. Howse, Jr.,
180 W. Washington St., Suite 800
Chicago, Illinois 60602
(312) 372-8105

Roosevelt Thomas
One N. LaSalle Street
Suite 2065
Chicago, Illinois 60603
(312) 641-0860

Janice H. Robinson
100 W. Monroe, Suite 913
Chicago, Illinois 60603
(312) 782-0100

Attorneys for Petitioners

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PETITION FOR WRIT OF CERTIORARI

QUESTIONS PRESENTED

1) Whether the Illinois Election Code, Ch. 46, Sec. 10-2, Ill.Rev.Stat. 1989, requirement that the Harold Washington Party (HWP) nominating petitions for Cook County, Illinois elective offices contain at least 50,000 registered voters' signatures, geographically apportioned equally between Chicago and suburban Cook County voters as interpreted and held by the Illinois Supreme Court Order of October 12, 1990 which removed the HWP and the HWP candidates from the Cook County, Illinois November 6, 1990 general election ballot, violates the First, Fourteenth and Fifteenth Amendments to the United States Constitution, as previously held by the United States Supreme Court in Moore v. Ogilve, 394 U.S. 814 (1969) and Illinois State Board of Elections v. Socialist Workers Party, 440 U.S. 173 (1979).

2) Whether the requirement of the Illinois Election Code, Ch. 46, Sec. 10-2, Ill.Rev.Stat., 1989, as construed and held by the Illinois Supreme Court Order of October 12, 1990, that the HWP nominating petitions for suburban Cook County Board Commissioners to be elected exclusively by suburban Cook County voters (excluding Chicago voters), contain 25,000 suburban Cook County registered voters' signatures, when said election code simultaneously requires that nominating petitions for the Cook County wide elective offices of State's Attorney, Sheriff, Assessor, Treasurer, Clerk, to be elected by both the voters of Chicago and suburban Cook County need only contain 25,000 registered voters signatures from throughout the entire county, Chicago and suburban Cook County, violates the First, Fourteenth and Fifteenth Amendments to the United States Constitution.

3) Whether the Illinois Election Code, Ch. 46, Sec. 10-5.2, Ill,Rev,Stat,, 1989, as construed and held by the Illinois Supreme Court Order of October 12, 1990, prohibiting the HWP, an established political party in the City of Chicago, from using the HWP name in expanding outside the City of Chicago into Cook County, Illinois in seeking to elect HWP candidates to Cook County, Illinois elective offices, violates the First, Fourteenth and Fifteenth Amendments to the United States Constitution.

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BARBARA J. NORMAN, JANICE H. ROBINSON, DONALD PAMON, HELIDA R. RICHARDSON, TOMMY BREWER, CHARLES W. ALEXANDER, DOROTHY C. HOGAN, WILL LAWRENCE, KENNETH G. HOPKINS, R. EUGENE PINCHAM, ROBERT E. PINCHAM, JR., ROBERT E. BROOKS, PERCY V. COLEMAN, VIVIAN D. STEWART-TYLER, JAMES A. DEANS, DINO F. McNEAL, MARY KING CRISS, DAVID T. PERSONS, MELLO SAM H. CLORA, JUDY MARIE HAWTHORNE, CHESTER LeSURE, CELIA DUNCAN, DON C. PASSMORE, JR., and BOBBIE J. SMITH,

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- vs. -

DOROTHY REED, VALERIE A. SUTTON, PATTON L. FEICHTER, ERVIN S. RICKS, and DAVID BARRERA; STANLEY T. KUSPER, JR., AURELIA PUCINSKI and ERNESTO D. BORGES constituting THE COOK COUNTY OFFICERS ELECTORAL BOARD; STANLEY T. KUSPER, individually and as CLERK OF COOK COUNTY, ILLINOIS; ARNETTE HUBBARD, RAYMOND JAGIELSKI and MICHAEL HAMBLET constituting the CHICAGO BOARD OF ELECTION COMMISSIONERS,

Respondents-Appellees.

PETITION FOR WRIT OF CERTIORARI TO THE ILLINOIS SUPREME COURT

Petitioners, candidates of the Harold Washington Party (HWP) for Cook County elective offices in the Cook County, Illinois November 6, 1990 general election, respectfully pray that a Writ of Certiorari issue to review the Illinois Supreme Court Order of October 12, 1990, which removed the HWP and the HWP candidates, petitioners, from the Cook County, Illinois November 6, 1990 general election ballot.

OPINIONS BELOW

The order of the four (4) majority Justices of the Illinois Supreme Court removing the HWP and the HWP candidates from the Cook County, Illinois November 6, 1990 general election ballot, entered on October 12, 1990, has not yet been reported. Although said order, set forth herein in Appendix B, Pages 2 to 5, states that "the order is entered by vote of a majority of the Court, with an opinion to be filed at a later date, ", and that "an opinion will later be filed setting forth the reasons supporting this order.", no such opinion has yet been filed. Parenthetically, we note that two (2) of the four (4) majority Justices of the Illinois Supreme Court, John J. Stamos and Daniel P. Ward, retired from the Court on December 6, 1990 and were replaced on the Court on that date by Justices Michael A. Bilandic and Charles Freeman.

The unreported dissenting opinion of Illinonis Supreme Court Justices Ryan, in which Justices Moran and Miller joined appears in Appendix B, pages 6 to 9 herein. The unreported dissenting opinion of Illinois Supreme Court Justices Miller, in which Justice Moran and Ryan joined, likewise appears in Appendix B, pages 10 to 14 herein.

JURISDICTION

Petitioners invoke jurisdiction pursuant to 28 U.S.C. Sec. 1257 (2) and (3) and United States Supreme Court Rule 17.1 (b) and (c). By Order entered October 12, 1990 the Illinois Supreme Court, the State Court of last resort, in construing and upholding the validity of Illinois Election Code Ch. 46, Secs. 10-2 and 10-5.2, Ill.Rev.Stat. (1989), decided in a manner

repugnant to the Constitution of the United States questions of federal law regarding the First, Fourteenth and Fifteenth Amendment rights of a political party, its candidates and voters, in direct conflict with the prior decisions of this Court in Moore v. Ogilve , 394 U.S. 814 (1969) and Illinois State Board of Elections v. Socialist Workers Party , 440 U.S. 173 (1979), and in further conflict with the decision of the United States Court of Appeals for the Seventh Circuit in Communist Party of Illinois v. State Board of Elections , 518 F.2d 517 (7th Cir.) cert. denied, 423 U.S. 986 (1975).

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievance."

The Fourteenth Amendment to the United States Constitution provides:

> "No state shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Fifteenth Amendment to the United States Constitution provides:

> "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude."

STATUTES INVOLVED

Illinois Election Code, Ch. 46, Sec. 10-2, Ill.Rev.Stat. 1989:

> "[Any] such group of persons hereafter desiring to form a new political party within any county shall file such petition with the County Clerk; . . . any such petition for the formation of a new political party . . . shall at the time of filing contain a complete list of candidates of such party for all offices to be filled in the . . . political subdivision . . . ; if such new political party shall be formed for the entire State, shall be signed by 1% of the number of voters who voted at the next preceding State-wide general election or 25,000 qualified voters, whichever is less. If such new political party shall be formed for any district or political subdivision less than the entire State, such petition shall be signed by qualified voters equalling in number not less than 5% of the number of voters who voted at the next preceding regular election in such district or political subdivision voted as a unit for the election of officers to serve its respective territorial area. However, whenever the minimum signature requirement for a district or political subdivision new political party shall exceed the minimum number of signatures for State-wide new political party petitions at the next preceding State-wide general election, such State-wide petition signature requirement shall be the minimum for such district or political subdivision new political party petition.
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> • • •
>
> In the case of a petition to form a new political party within a political subdivision in which officers are to be elected from district and at-large, such petition shall consist of separate components for each district from which an officer is to be elected. Each component shall

> be circulated only within a district of the political subdivision and signed only by qualified electors who are residents of such district.
>
> . . . Each component of the petition for each district from which an officer is to be elected must be signed by qualified voters of the district equalling in number not less than 5% of the number of voters who voted at the next preceding regular election in such district at which an officer was elected to serve the district. <u>The entire petition, including all components, must be signed by a total of qualified voters of the entire political subdivision equalling in number not less than 5% of the number of the voters who voted at the next preceding regular election in such political subdivision at which an officer was elected to serve the political subdivision at large</u>. **(Emphasis added).**

Illinois Election Code Chapter 46, Section 10-5.2, Ill.Rev.Stat. 1989:

> "All petitions for nomination shall, besides containing the names of the candidates, specify as to each:
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> • • •
>
> 2. The new political party, if any, represented, expressed in not more than five (5) words. However, such party shall not bear the same name as, nor include the name of any established political party as defined in this Article. This prohibition does not preclude any established political party from making nominations in those cases in which it is authorized to do so."

STATEMENT OF THE CASE

The HWP is a Chicago, Illinois political party whose membership is predominantly African-American. It was founded and it exists, in part, because of the insults, the disrespect and the denial of reciprocal political empowerment and benefits to Chicago-Cook County African-American voters by the Chicago-Cook County, Illinois Democratic Party, to which many of the HWP members formerly belonged. The HWP was founded and incorporated in Illinois as a political party in 1989. It slated a candidate for mayor of the City of Chicago in the April, 1989 general mayoral election, with nominating petitions which contained the signatures of over 104,000 Chicago registered voters. In the April, 1989 Chicago general mayoral election, the HWP mayoral candidate received 330,000 straight HWP votes, and a gross total of 428,000 votes, approximately 47% of the total votes cast in the election. The HWP thereby became an established political party in the City of Chicago under the Illinois Election Code, Ch. 46, Sec. 10-2, Ill. Rev. Stat., 1989.

Although Richard M. Daley, the Democratic Party mayoral candidate won the mayoral election with a total of 575,000 votes, he received only 295,000 straight party votes in said election, 35,000 straight party votes less than the HWP mayoral candidate. The Republican Party mayoral candidate, Edward Vrdolyak, received less than five percent (5%) of the total votes cast in the election. Thus there are but two established political parties in the City of Chicago, as defined by the Illinois Election Code, the Harold Washington Party and the Democratic Party. Because the Republican Party candidate in the April, 1989 general mayoral election received less than five percent (5%) of the total votes cast, under the provisions of the Illinois Election Code, the Republican Party is not an established political party in the City of Chicago. Parenthetically, there are two established political parties in suburban Cook County outside the City of Chicago, the Republican Party and the Democratic

Party.

To expand itself as an established political party into Cook County, Illinois the HWP on August 6, 1990 filed in the Office of the Cook County, Illinois Clerk its nominating petitions, which contained over 60,000 Chicago and Cook County registered voters' signatures to have its therein named candidates placed on the November 6, 1990 general election ballot for the Cook County, Illinois offices of President of the Cook County Board of Commissioners, Sheriff, State's Attorney, Assessor, Clerk, Treasurer, Superintendent of Education, Commissioners of the Board of Appeals, Cook County and Chicago Commissioners of the Cook County Board and Water Reclamation district Commissioners.

Of the 60,000 signatures on the HWP nominating petitions 44,000 were of Chicago registered voters. About 7,800 signatures were of registered voters residing in suburban Cook County outside Chicago. Approximately 8,000 signatures were of registered voters from both Chicago and suburban Cook County and were for the nomination of Water Reclamation District candidates only.

On August 13, 1990, verified objections individually subscribed and sworn to by five (5) Chicago Cook-County voters, Respondents-Appellees herein, Dorothy Reed, Valerie A. Sutton, Patton L. Feichter, Ervin S. Ricks and Jeanie Barrara, were filed challenging the validity of the HWP nominating petitions. The objectors sought to have the HWP and its candidates removed from the November 6, 1990 Cook County general election ballot. When the objections were filed it was publicly represented by the objectors' attorney that the five objectors were simply five spirited minded voters who filed their objections to remove the HWP and its candidates from the November 6th ballot pursuant only to their civic duty. Evidence presented at the hearing of the objections, however, established that these representations were false, and that the five objectors filed the objections to remove the HWP and its

candidates from the November 6, 1990 ballot at the clandestine and covert instigation, benefit and request of Cook County Illinois Democratic Party Leaders.

The verified objections and the approximately 6,000 " Appendix Recapitulation" sheets which were filed in support of the objections, alleged that the HWP nominating petitions were legally insufficient on grounds that the HWP petitions: 1) Did not contain a judicial slate; 2) Did not contain the requisite 25,000 suburban signatures; 3) Illegally contained the name R. Eugene Pincham, an ineligible candidate; and 5) and 6) Contained illegal, improper, non-genuine signatures of unregistered voters.

The HWP candidates filed with the Cook County Officers Electoral Board motions to strike and dismiss objections one (1) through four (4) on legal grounds, on which the Electoral Board heard arguments of counsel and took the motions to strike and dismiss under advertisement. As to objections numbers five (5) and six (6), i.e., the HWP nominating petitions contained illegal, improper, non-genuine and unregistered voters' signatures, the HWP candidates filed a motion to strike and dismiss objections five and six on the ground inter alia, that each of the Objectors' 6,000 "Appendix Recapitulation" sheets, numbers 1 through 6,000 filed in support of the objections, were the Objectors' recapitulations of the corresponding HWP nominating petitions, numbers 1 through 6,000, and they ostensibly specified the alleged defects in the signatures on the HWP nominating petitions; that from a mere cursory examination of each of the Objectors' 6,000 "Appendix Recapitulation" sheets, they, each and all, were in fact photostatic-duplicate copies of one and the same original and were prima facie fraudulent and illegal.

The Electoral Board held an evidentiary hearing on the HWP Candidate's motion to dismiss the objections, numbers five and six, based on the candidate's allegations that the Objectors' 6,000 "Appendix Recapitulation" sheets were fraudulent.

The uncontradicted direct and cross examination testimony of Bonnie McGuire, a witness for the objectors on said evidentiary hearing, established that the five objectors' sworn objections were false, and that their challenge to remove the HWP and its candidates from the November 6, 1990 ballot was surreptitiously instigated by Cook County Democratic Party Chairman, Thomas Lyons, and the Democratic Party's Attorney, Ray Simon, in whose law office the aforementioned fraudulent 6,000 "Appendix Recapitulation" sheets were first seen by McGuire, and which were shortly thereafter filed by the objectors' attorney in support of the objections.

The undisputed testimony of Bonnie McGuire before the Electoral Board further established that on August 13, 1990, when the objectors filed their objections, no one had checked or compared any address or signatures on the HWP nominating petitions with any address or signatures of any registered voter on the official voters' registration card, commonly referred to as the binder, and therefore, there could not have been a valid or reasonable determination that the signatures on the HWP nominating petitions were invalid or not genuine. as stated in the "Appendix Recapitulation" sheets; and additionally, that no one checked with or ascertained from any signator or any circulator of the HWP nominating petitions, or from any other source, that such signatures were improper or unauthentic. [1]

Upon conclusion of the evidentiary hearing and arguments of counsel, on August 29, 1990 the Electoral Board rendered its written decision, Appendix D. The Electoral Board's decision overruled the Objectors' objections and

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[1] Based, in part, on the foregoing testimonial revelation of Bonnie McGuire before the Electoral Board, the HWP filed a civil action for money damages against the Cook County, Illinois Democratic Party, its Chairman, Thomas Lyons, its attorney, Raymond Simon, Bonnie McGuire, and five objectors et.al., for engaging in an illegal conspiracy to remove the HWP and its candidates from the November 6, 1990 Cook County, Illinois general election ballot in violation of 42 U.S.C., Sec. 1983 and the First, Fourteenth and Fifteenth Amendments to the Constitution of the United States. This civil action entitled Harold Washington Party v. Cook County Democratic Party, et al., 90 C 5731 is pending in the United States District Court, Northern District of Illinois, Eastern Division the Honorable Charles Kocoras, Presiding.

sustained the HWP candidates' motion to strike and dismiss objections five and six of the Objectors' objections, i.e. the HWP nominating petitions contained illegal signatures.

The Board decreed that the use of the HWP name was not improper and sustained the HWP candidates' motion to strike and dismiss that objection, to which one member dissented in part. The Electoral Board likewise ruled that R. Eugene Pincham's candidacy on the HWP nominating petitions was valid and sustained the HWP's motion to dismiss this objection. The Board similarly ruled on the failure to slate judicial candidates objection, one member dissenting. The Board upheld the objectors' challenge to the HWP Water Reclamation and Suburban Cook County Board of Commissioners nominating petitions on the ground that these two nominating petitions lacked the required 25,000 signatures under Ch. 46, Sec. 10-2, Ill.Rev.Stat., 1989, the Illinois Election Code.

Thus, the Board held that the HWP nominating petitions for the Cook County offices of President of the Board of Commissioners, State's Attorney, Assessor, Clerk, Sheriff, Treasurer, Superintendent of Education, Commissioner of Board of Appeals and the Chicago member of the Cook County Board of Commissioners were valid and the Board certified these HWP candidates to the November 6, 1990 general election ballot. Conversely, the Electoral Board ruled that because the HWP Water Reclamation nominating petitions did not contain 25,000 Chicago-Cook County registered voters signatures, and that because the HWP Suburban Cook County Board of Commissioners nominating petitions did not contain 25,000 suburban Cook County registered voters' signatures, said nominating petitions were invalid and that the HWP candidates for these two offices would not be placed on the November 6, 1990 ballot.

The Objectors did not seek judicial review of the Board's decision dismissing objections numbered five and six based on the fraudulent "Appendix

Recapitulation" sheets. The Objectors filed a petition for judicial review of that portion of the Board's decision which dismissed objections numbered one through four, i.e., (1) no judicial slate, (2) the lack of 25,000 suburban signatures, (3) use of the Harold Washington Party name, and (4) R, Eugene Pincham, an ineligible candidate. The HWP candidates filed a petition for judicial review of the Board's decision striking from the ballot the HWP candidates for suburban membership on the Cook County Board of Commissioners from the November 6, 1990 ballot. [2]

After argument of counsel, on September 20, 1990 the Circuit (Review) Court entered it's decision Appendix C, pages 15 to 24, removing the HWP and all the HWP candidates from the Cook County November 6, 1990 ballot, on the ground that "the failure to obtain 25,000 signatures for the suburban Cook County Commissioners candidates voids the entire slate of Cook County candidates of the Harold Washington Party."

The HWP candidates appealed to the Illinois Appellate Court. The objectors moved for a direct and expedited appeal to the Illinois Supreme Court, which granted the motion. On October 12, 1990, a majority of four (4) of the Justices of the Illinois Supreme Court, divided strictly along partisan political party lines, entered an order which affirmed the Circuit (Review) Court's Decision removing the HWP and its candidates from the November 6, 1990 ballot, Appendix B, pages 2 to 5. The four Democratic Party Justices

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[2] Because the provisions of the Illinois Election Code, Ch. 46, Secs. 10-8 and 10-10.1 preclude the appearances or the participation of the HWP and/or its voting supporters in the proceedings before the Electoral Board or on appeal before the Courts of Review, six (6) voting supporters of the HWP filed civil action to enjoin the removal of the HWP from the November 6, 1990 general election ballot under the provisions of 42 U.S.C., Sec. 1983 in the United States District Court for the Northern District of Illinois, Eastern Division the Honorable John Nordberg Presiding, Timuel Black, et al., v. Cook County Officers Electoral Board, et al., 90 C 5529. The District Court dismissed the complaint on the grounds that it lacked subject matter jurisdiction. An appeal of said dismissal is now pending in the United States Court of Appeals for the Seventh Circuit, 90 C 3203.

held that Sec. 10-2 of the Illinois Election Code required the HWP nominating petitions to contain 25,000 signatures of suburban Cook County registered voters and 25,000 signatures of Chicago registered voters, and Sec. 10-5 of the Illinois Election Code prohibited the HWP from using the name "Harold Washington Party" in expanding from Chicago into suburban Cook County. Three (3) Justices of the Illinois Supreme Court dissented, and stated "the majority result in the present case seemingly conflicts with the Supreme Court's decision in Illinois State Board of Election v. Socialist Workers Party, supra, which invalidated, on constitutional grounds, an earlier provision in Sec. 10-2 that effectively required a new party to present more signatures to run a candidate in the City of Chicago than statewide. The majority's construction of the statute produces a similar disparity." Appendix B, pages 6 to 14 .

REASONS FOR GRANTING THE WRIT

I.

THE ILLINOIS ELECTION CODE, CH. 46, SEC. 10-2, ILL.REV.STAT. 1989, REQUIREMENT THAT THE HWP NOMINATING PETITIONS FOR COOK COUNTY ELECTIVE OFFICES CONTAIN AT LEAST 50,000 REGISTERED VOTERS' SIGNATURES, GEOGRAPHICALLY APPORTIONED EQUALLY BETWEEN CHICAGO AND SUBURBAN COOK COUNTY ILLINOIS VOTERS VIOLATES THE FIRST, FOURTEENTH AND FIFTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

In Moore v. Ogilve, 394 U.S. 814 (1969), this Court struck down on constitutional equal protection grounds the Illinois Election Code requirement that nominating petitions of a candidate for statewide office be geographically apportioned. Thereafter, the Illinois Election Code was amended to provide that not more than 13,000 signatures on a new party's petition for state-wide elections could come from any one county. The Court of Appeals for the Seventh Circuit held that this amended provision unconstitutional in Communist Party of Illinois v. State Board of Elections, 518 F.2d 517, cert denied, 423 U.S. 986 (1975).

Subsequently, in Illinois State Board of Elections v. Socialist Workers Party, 440 U.S. 173 (1979) this Court ruled that to require more than 25,000 signatures on nominating petitions for candidates seeking election in a political subdivision of the State of Illinois under the banner of a new political party is unconstitutional and deprives the party, its candidates and voters of equal protection.

The Illinois Election Code, Ch. 46, Sec. 10-2 provides in relevant part:

"The entire petition, including all components of qualified voters of the entire political subdivision equaling in number not less than (25,000) or 5% of the number of voters who voted at the next preceding regular election in such political subdivision in which an officer was elected to serve the political subdivision at large.

• • •

However, whenever the minimum signature requirement for a district or political subdivision new political party petition shall exceed the minimum number of signatures for state-wide general election, such state-wide petition signature requirement shall be the minimum for such district or political subdivision new political party petition."

Thus, the minimum number of signatures required state-wide for state-wide office is 25,000. But the political subdivision at issue in the case at bar is Cook County. Voters in both Chicago and suburban Cook County vote for the Cook County political offices of County Board President, State's Attorney, Assessor, Clerk, Treasurer, Sheriff, Superintendent of Educational Services and Board of Appeal Commissioners. Nonetheless, and notwithstanding this Court's prior decisions in Ogilve and Socialist Workers Party the Supreme Court of Illinois interpreted Sec. 10-2 to require that the HWP nominating petition for Cook County elective offices must have a total of 50,000 signatures geographically apportioned between the City of Chicago and suburban Cook County. In Ogilve this Court ruled "it is no answer to the argument under the Equal Protection Clause that the [Illinois election] law was designed to require state-wide support for launching a new political party rather than support from a few localities." In the instant case, Sec. 10-2 of the Illinois Elecion Code cannot be constitutionally interpreted to require geographical apportionment of the necessary signatures between the city and suburbs or to require more than a

total of 25,000 signatures, or to require 25,000 registered voters' signtatures from each of the political subdivisions, i.e., Chicago and Cook County.

This court stated in Socialist Workers Party , "we therefore hold that the Illinois Election Code is unconstitutional insofar as it requires independent candidates in new political parties to obtain more than 25,000 signatures in Chicago."

Likewise in the case at bar, the Illinois Supreme Court's majority interpretation that Sec. 10-2 requires 25,000 voters' signatures from suburban Cook County Board Commision members, when only 25,000 signatures are required from the entire County, including Chicago, for the county-wide offices of State's Attorney, Treasurer, Clerk, Assessor, and County Board President, likewise violates constitutional equal protection.

In Lubin v. Panish, 415 U.S.709, this court stated:

"This legitimate state interest, [to keep the ballot free from being crowded by frivolous candidates] however, must be achieved by a means that does not unfairly or unnecessarily burden either a minority party's or an individual candidate's equally important interest in the continued availability of political opportunity. The interests involved are not merely those of parties or individual candidates; the voters can assert their preference only through candidates or parties or both and it is this broad interest that must be weighed in the balance. The right of a party or an individual to a place on a ballot is entitled to protection and is intertwined with the right of voters." Id. at 716.

There is not the slightest suggestion that the HWP candidates are frivolous or that the state's interest in the case at bar is "screening out frivoulous candidates". Illinois State Board of Election v. Socialist Workers Party, 440 U.S. 173, 195, (1979). The minority dissenting opinion of the Illinois Supreme Court, in the case at bar states, "The formation of political parties and the freedom to vote for candidates of

ones choosing are fundamental rights under both the Federal and State Constitutions. (citations omitted) The various provisions of the Election Code deserve a liberal construction so that those rights may be fulfilled. The Court's decision in the present case is not compelled by a fair reading of the relevant statutes and unnecessarily hampers voters of this State in the exercise of their rights." Appendix B, pages 6 to 14 .

The Striking of the HWP and its candidates from the November 6, 1990 general election ballot and the resultant disenfranchisement of its supporting voters is unprecedented and constiutionally repugnant. McCarthy v. Briscoe, 429 U.S. 1317 (1976). Indeed, we note the majority Illinois Supreme Court Order removing the HWP and all its candidates from the November 6, 1990 ballot is contrary and repugnant to even that court's prior decision in Anderson v. Schneider , 62 Ill.2d 165 (1977).

In Schneider, the Electoral Board struck the nominating petition of an entire party and all of its candidates from the ballot upon determining that one of the party's candidates was legally ineligible. The Electoral Board held that because the candidate was ineligible, the party failed to nominate an entire slate of candidates and the nominating petitions were therefore invalid. The Illinois Supreme Court ruled:

> "The sanction imposed by the Electoral Board and the Circuit Court was a harsh one. It effects not only the rights of the candidates but those of the voters. Nor have the defendants suggested any reason why such a sanction is necessary to protect the integrity of the electoral process.
>
> It is now well recognized that the power of the state in determining voter qualifications and the conduct of elections must be exercised in a manner consistent with the Equal Protection and Due Process Clauses of the Fourteenth Amendment and with the interrelated right to associate for political purposes which is guaranteed by the First Amendment.

> That the process of denying a candidate a place on the ballor because of the ineligibility of other candidates is constitutionally vulnerable is particularly manifest from Lubin v. Panish, 415 U.S. 709 (1974).
>
> Certainly there is no interest necessary to preserve the integrity of the ballot justifying the removal of the party and all of its candidates from the ballot because of want of eligibility of a single candidate.
>
> We hold Sec. 10-2 confers no authority for the removal of all of the candidates because one is unqualified." 67 Ill.2d 165, 171, 174, 175, 176. (Emphasis added)

Since Schneider, the Illinois legislature has not designated the sanctions or remedy to be imposed because of a political party's failure to completely comply with the full slate requirement or other requirements of the election code. To leave such unbridled remedies to the undefined, arbitrary and whimsical determinations of the numerous Illinois Reviewing Circuit and Appellate Courts, Electoral Boards and the Illinois Supreme Court violates fundamental constitutional due process and equal protection. Parenthetically, we note that both the Democratic and Republican Parties regularly, throughout the State, in varying elections fail to slate a complete list of candidates of such party for all offices to be filled in such elections.

It is patently clear that the majority Illinois Supreme Court Order construing Ch. 26, Sec. 10-2 of the Illinois Election Code to require that the HWP nominating petitions contain 25,000 suburban Cook County and 25,000 Chicago registered voters' signatures is in direct conflict with and viciously violates this Courts holdings in Ogilve and Socialist Workers Party and the First, Fourteenth and Fifteenth Amendments to the Constitution of the United States.

II.

THE ILLINOIS SUPREME COURT MAJORITY ORDER BARRING USE BY THE HAROLD WASHINGTON PARTY OF ITS PARTY NAME IN EXPANDING BEYOND THE CITY OF CHICAGO INTO SUBURBAN COOK COUNTY VIOLATES PETITIONERS-APPELLANTS FIRST, FOURTEENTH AND FIFTEENTH AMENDMENT CONSTITUTIONAL RIGHTS

The majority order of the Illinois Supreme Court offers no articulation whatsoever of any state interest to be protected by depriving an established political party the use of its name as it expands. As noted by Illinois Supreme Justice Miller in his dissenting opinion, Appendix B, pages 10 to 14:

> "It is clear, then, that the statutory scheme contemplates that a political party might become an established entity in one district or political subdivision of the state but not in others. With respect to parties that are not established entities on a state-wide basis, I would thus construe the statutory proscription on the use of an established party's name as extending only 'as to such district or political subdivision' in which the party has been established under Article X. Because the Harold Washington Party is an established entity only in the City of Chicago, Article X [of the Illinois Election Code] does not, by its literal terms, prohibit the present candidates from running for county offices under the same party name.
>
> The purpose of the statutory limitation on the names that may be used by a political party are to prevent a new party from gaining ballot access by unfairly piggy backing on the successes of an established party and to avoid confusion. It is clear in the present case that the purpose of the legislation would not be undermined by allowing the county candidates to run under the Harold Washington Party name.

• • •

> Thus, after today's decision, it is not clear how a new party may go about expanding from one district to another."

There is no state interest that justifies the burdensome and complicated regulation as interpreted by the Illinois Supreme Court that in effect makes impracticable any alternative to the major parties. See, Storer v. Brown, 415 U.S. 724, 746, (1974). "The right to vote is heavily burdened if that vote may be cast only for one of two parties at a time when other parties are clamoring for a place on the ballot." Williams v. Rhodes, 393 U.S. 23, 31 (1968). In Socialist Workers Party this Court held that there must be a compelling reason to justify the imposition of such burdens on political parties, as in the instant case. A constitutionally permissable justification must be established to warrant the oppresive ballot status prerequisite in the case at bar. No such justification exists. By denying the HWP the use of its party name in expanding from a city municipal party to a county-wide party, the Illinois Supreme Court impermissably restricted the continued availability of political opportunity to the HWP, its candidates and the party's one half million voters and supporters. Clearly, the HWP has a significant modicum of support. Jentsen v. Fortson, 403, U.S. 431 (1971). The Illinois Supreme Court's refusal to allow the HWP to use its name for geographical extension purposes cannot constitutionally stand.

III.

This Case Raises Important and Unresolved Constitutional Issues Left Unresolved By Moore v. Ogilve, And Illinois State Board of Elections v. Socialist Workers Party, And The Constitutional Conflict Is Likely To Recur

This Court has consistently and repeatedly prohibited intentional racial discrimination in restricting access to the ballot. This Court has also consistently and repeatedly held that undue restrictions and burdens on independent candidates and political parties violates the First and Fourteenth Amendments just as racial discrimination in restricting access to the ballot violates the Fifteenth Amendment to the United States Constitution. Both this Court and the United States Court of Appeals for the Seventh Circuit have repeatedly held provisions of the Illinois Election Code and Sec. 10-2 thereof to be unconstitutional. Moore v. Ogilve, supra; Illinois State Board of Elections v. Socialist Workers Party, supra; Communist Party of Illinois v. State Board of Elections, supra. But, because Chicago and Cook County have so long been dominated and monopolized by a single political party, the Democratic Party, political dissent has been successfully suppressed and alternative political options to the Democratic Party have largely been nonexistent. Even the Republican party, a major political party established state-wide (and elsewhere throughout the United States) has had little success in breaking the political strangle-hold of the Democratic Party in the Chicago metropolitan area. A republican form of government, guaranteed by the United States Constitution, compels that this Court once again intervene and secure free access to the ballot for the citizens of Chicago and Cook County, Illinois. See, McCarthy v. Briscoe, 429 U.S. 1317, 1323 (1976).

The Court held in Reynolds v. Sims, 377 U.S. 533 at 554:

> "The right to vote freely for the candidate of one's choice is the essence of a democratic society, and any restrictions on the right strike at the heart of representative government and the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." Id. at 555.

It is the position of the HWP that the sole purpose of the objectors and the lower courts' ruling removing the HWP and its candidates from the ballot is to disenfranchise, delay and prevent the voters of Cook County from making their own independent choices and to prevent those voters who choose to vote for the HWP candidates in the November 6, 1990 general election from doing so. It is further the HWP position that the purpose of the partisan, politically motivated, erroneous, adverse ruling, contrary to established federal law, by the Illinois Supreme Court was to prevent HWP candidates from free access to the November 6, 1990 election ballot for the benefit for the Chicago Cook County Democratic Party.

CONCLUSION

For the reasons set forth in this petition, we pray that the Writ of Certiorari to review the Illinois Supreme Court Order of October 12, 1990 removing the HWP and its candidates from the Cook County, Illinois November 6, 1990 general election ballot.

R. Eugene Pincham, Sr.
One of the Attorneys for
Petitioners-appellants

R. Eugene Pincham
Robert E. Pincham, Jr.
Roosevelt Thomas
Nathaniel R. Howse, Jr.
Janice Robinson
Attorneys for
Petitioners-Appellants
100 West Monroe, Suite 913
Chicago, Illinois
(312) 782-0100

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Appendix A 1

Illinois Supreme Court Order of October 18, 1990
denying recall of its Mandate 1

No. 70833

IN THE
SUPREME COURT OF ILLINOIS

DOROTHY REED, et al.,

Petitioners-Appellees,

v.

BARBARA J. NORMAN

Respondents-Appellants.

ORDER

Upon Written Motion to Recall the Mandate of this Court of October, 12, 1990, this Court herby denies said Motion.

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Appendix B 2-14

Order of Four Majority Illinois Supreme Court Justices entered October 12, 1990 removing the HWP and its candidates from the Cook County, Illinois November 6, 1990 general election ballot 2-5

The two dissenting opinions of the three dissenting Illinois Supreme Court Justices 6-14

IN THE
SUPREME COURT OF ILLINOIS

DOROTHY REED et al.,

Petitioners-Appellees,

v.

BARBARA J. NORMAN et al.,

Respondents-Appellants.

ORDER

This case is before the court on an appeal and cross-appeal from a judgment of the circuit court of Cook County to this court. Pursuant to our Rule 302 (b) (107 Ill. 2d R. 302 (b)). The briefs of the parties were submitted to the court. Because of the time limitation associated with the general election to be held in this state on November 6, 1990, the following order is entered by vote of a majority of the court, with an opinion to be filed at a later date.

The circuit court ruled that the holding of the Cook County courty officers electoral board that the Metropolitan Water Reclamation District Harold Washington Party candidates be removed from the ballot was correct.

That ruling of the circuit court has not been challenged in this appeal. The ruling of the circuit court is therefore final and will not be considered in this order.

The Cook County officers electoral board held, and the circuit court, on review, affirmed the holding, that the petitioners use of the name "Harold Washington Party" in the petition to form a new political party, pursuant to section 10-2 of the Election Code (Ill. Rev. Stat. 1989, ch. 46, per. 10-2),does not violate the provisions of section 10-5 of the Election Code (Ill. Rev. Stat. 1989, ch. 46, par. 10-5), which prohibits use of the name of an established political party (Ill. Rev. Stat. 1989, ch. 46, par. 10-1 et seq.). This court, by majority vote, holds that the petitioners use of the Harold Washington Party name in their petition did violate the provisions of section 10-5. Accordingly, the holding of the circuit court on this question is hereby reversed as erroneous.

The Cook County county officers electoral board held, and the circuit court affirmed, that the city of Chicago and the suburban area of Cook County are two separate districts from which officers are to be elected and that, under section 10-2 for the formation of a new political party, a separate component of the petition for each district must be circulated, and each component must be signed by 5% of the number of voters who voted at the last election to elect officers serving that district, not to exceed 25,000. The circuit court held that the component of the potition for the suburban district did not comply with the requirement of section 10-2 of the Code in this respect. By majority vote of this court, the holding of the circuit court is affirmed: that the component for the suburban district had an insufficient number of signatures for compliance with

section 10-2 of the Election Code and that the names of the candidates listed and nominated for the suburban district thus did not qualify for placement on the ballot.

By Majority vote of this court the further holdings of the circuit court are affirmed: that section 10-2 requires that a petition to form a new political party contain the above described number of signatures from alol components of the petition, that is, from the components of Chicago and the suburbs; that because of this failure to comply with section 10-2 the names of all candidates listed and nominated according to the appellants petition fail to quality for placement on the ballot at the general election on November 6, 1990.

It will not be necessary to discuss other points raised on the appeal. It is noted, however, that it appearing that R. Eugene Pincham, Sr., has been nominated as a Democratic Party candidate for the office of Cook County commissioner, that Qualification and candidacy are of course not affected by this order.

It is further ordered by a majority of this court:

(a) That any injunction or stay order heretofore issued, by either the circuit court of Cook County or the appellate court, relating to the appearance of the Harold Washington Party or its candidates on the ballot for the general election referred to above is vacated.

(b) That the Cook County clerk and the Chicago board of election commissioners shall proceed forthwith to prepare and print ballots for the general election in accordance with the provisions of this order.

(c) That the mandate of this court shall issue immediately and without stay.

An opinion will later be filed setting forth the reasons supporting this order.

DATED this 12th day of October, 1990.

Moran, C.J., Ryan and Miller, JJ., dissenting.

IN THE
SUPREME COURT OF ILLINOIS

DOROTHY REED et al.,

Petitioners-Appellees,

v.

BARBARA J. NORMAN et al.,

Respondents-Appellants.

ORDER

JUSTICE RYAN dissenting:

I dissent from the order of the majority of this court, which denies the Harold Washington Party candidates access to the ballot. The order results from a needlessly narrow and strict construction of the Illinois Election Code and a construction which I see as wrong. I also join in Justice Miller's dissent.

In holding that the petitioners use of the name Harold Washington Party violates the provisions of section 10--5 of the Election Code (Ill. Rev. Stat. 1989, ch. 46, par. 10--5), the majority of this court has focused primarily on the language of section 10--5 of the Election Code, which prohibits the use by a new political party of the name of an established party. However, section 10--5 does not just refer to an established party, but refers to an established party "as defined in this article." Section 10--2 of the Election Code defines established party. These two sections of the

Code, read together, support the conclusion that the petition before this court does not violate section 10--5, a position which I will explain in detail in a dissent I will write to the opinion the majority will file at a later date.

As to the provisions of the Election Code concerning the required number of signatures on a new party's petition, here again the majority of this court adopted a narrow and strict construction of the language of section 10--2. In fact, theprovisions of section 10--2 are contradictory in this regard and the majority chose to adopt the language that would rule the Harold Washington party candidates from suburban Cook County off the ballot instead of the language of that section which would have permitted them to remain on the ballot. The last sentence of the fourth paragraph of section 10--2 would limit the number of signatures required from all of Cook County to 25,000, whereas the next to the last sentence of the seventh paragraph of section 10--2 appears to require 25,000 signatures from each component of the county petition; that is, the City of Chicago and the suburban areas.

The last sentence of the seventh paragraph of section 10--2 does not require that the petition contain 25,000 signatures from all components, as the majority of this court holds. Instead, that sentence provides: "the entire petition, including all components, "must be signed by the required number of signatures, so it is the entire petition that must have 25,000 signatures. If the statute would have said "including each component" instead of "including all components" there would have been some justification for the majority's holding that the component for the suburbs and the component from Chicago each have 25,000 signatures. In the next to the last sentence of the seventh paragraph the legislature referred to each

component when it meant each . However, in the last sentence of that paragraph in speaking of the entire petition the legislature stated "including all components." A logical construction would be that the entire petition for the formation of a new party in Cook County must have 25,000 signatures.

This construction is strongly supported by the last sentence of the fourth paragraph of section 10--2 to which I earlier referred. That sentence would require that the minimum number of signatures for all of Cook County be 25,000.

As notes below, this court should construe the Election Code liberally in favor of permitting the Harold Washington Party access to the ballot. The majority of this court has instead read the signature requierments narrowly and strictly and has ignored contradicting and limiting language of section 10--2 in order to find that the petition did not have the required number of signatures.

We are dealing here with fundamental rights. In Illinois State Board of Elections v. Socialist Workers Party (1979), 440 U.S. 173, 59 L. ED. 2d 230, 99 S. Ct. 983, the Supreme Court stated that restrictions on access to the ballot burden two fundamental rights, the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters to cast their votes effectively. The Court, in that case, also stated that even when pursuing a legitimate interest, a State may not choose means which unnecessarily restrict constitutionally protected interests.

In light of theholding in Socialist Workers Party, it is incumbent upon this court to avoid a narrow and strict construction of the Election Code, Which denies the Harold Washington Party candidates access to the ballot. Instead, this court should apply a constrution of those sections

involved in this case which recognizes the fundamental rights involved, and which does not unnecessarily impinge upon those rights. Such a construction is logically possible by construing the sections involved together and liberally, and by not narrowly focusing solely on the limiting and restrictive language of specific sections.

In sum, since we are dealing here with fundamental rights. I believe it is incumbent upon this court to adopt the construction of the Election Code which will afford the Harold Washington Party candidates access to the ballot.

As to the majority's statement that the order of this court does not affect the candidacy of R. Eugene Pincham, Sr., as a candidate on the Democratic ticket, I do not dissent, because that issue was never briefed or arqued in this court and was not decided in the circuit court, whose judgment we are reviewing. I do, however, strongly object to such an advisory poinion being contained in this order. That question may well be the issue in another lawsuit, Mr. Pincham was counsel for the Harold Washington Party, petitioners in the proceedings below and in this court. I cannot understand why, After knocking the Harold Washington Party candidates off the ballot, the majority of this court finds it necessary to attempt to appease Mr. Pincham by gratuitously throwing him this morsel.

For the above reasons, I dissent.

CHIEF JUSTICE MORAN and JUSTICE MILLER join in this dissent.

IN THE
SUPREME COURT OF ILLINOIS

DOROTHY REED et al.,

Petitioners-Appellees,

v.

BARBARA J. NORMAN et al.,

Respondents-Appellants.

ORDER

JUSTICE MILLER, also dissenting:

By giving a cramped construction to several key provisions of the Election Code, today's decision nullifies without cause the efforts of the thousands of men and women who worked to place candidates of the Harold Washington Party on the Movember 1990 ballot in Cook County. I cannot concur in the court's disposition of the present matter, and I therefore join Justice Ryan's dissent and, in addition, write separately.

Section 10--5 of the Election Code bars a new political party from usingf the name "of any established political party as defined in this Article." (Ill. Rev. Stat. 1989, ch. 46, par. 10--5.) Under section 10--2, a political party may become established either on a statewide basis or in discrete districts or political subdivisions of the State. (Ill. Rev. Stat. 1989,

ch. 46,par. 10--2.) A party becomes established on a statewide basis if its candidate for the office of governor receives more than 5% of the entire vote cast for that position. A party becomes established on other than a statewide basis if one of its candidates for office in a political subdivision or district, including a municipality, recieves more than 5% of the entire vote cast within that area. In that instance, the party is established "as to such district or political subdivision." Ill. Rev. Stat. 1989, ch. 46, par. 10--2.

It is clear, then, that the statutory scheme contemplates that a political party might become an established entity in one district or political subdivision of the State but not in others. With respect to parties that are not established entities on a statewide basis, I would thus construe the statutory proscription on the use of an established party's name as extending only "as to such district or political subdivision" of the State but not in others. With respect to parties that are not established party's name as extending only "as to such district or political subdivision" in which the party has been established under Article 10. Because the Harold Washington Party is as established entity only in the City of Chicago, article 10 does not, by its literal terms, prohibit the present candidates from running for county offices under the same party name.

The purposes of the statutory limitation on the names that may be used by a new political party are to prevent a new party from gaining ballot access by unfairly piggybacking on the success of an established party and to avoid voter confusion. It is clear in the present case that the purposes of the legislation would not be undermined by allowing the county candidates

to run under the Harold Washington Party name. Before the electoral board. Alderman Timothy Evans, the Harold Washington Party candidate for mayor in the April 1989 Chicago mayoral election, testified that the present candidates for county office were using the party name with his approval. It is certainly true that Alderman Evans would have no authority to consent to a violation of the plain language of the statute. As I have already explained, however, the county candidates use of the name of the Harold Washington Party is not literally proscribed by the Election Code. Alderman Evans testimony should be considered in determining whether the purposes of the statute are implicated in the present case, and his statements demonstrate that the county candidates were not taking unfair advantage of the party's showing in the earlier municipal election.

Indeed, the majority's decision will significantly burden efforts by a new party to expand on other than a statewide basis. It is no answer to suggest, as the objectors do, that a party seeking to slate candidates in a district or political subdivision in which it had not previously run may use the Primary and caucus procedures contained in Article 7 of the Election Code. By their terms, those provisions are applicable only to political parties already established on either a statewide basis or in the particular district or political subdivision in which nomination is sought. (See Ill. Rev. Stat. 1989, ch. 46, par. 7--2.) Thuis, after today's decision, it is not clear how a new party may go about expanding from one district to another.

The majority also construes section 10--2 as requiring a new party to submit 25,000 signatures from both the city and suburban components of Cook County. Under the majority's interpretation, a new political party fielding candidates in that county must therefore gather a total of 50,000

signatures in support of its slate or face disqualification of the entire ticket. Section 10--2 provides, however, that a party seeking to run on a statewide basis will never be required to submit more than 25,000 signatures. The majority's result in the present case seemingly conflicts with the Supreme Court's decision in Illinois State Board of Elections v. Socialist Workers Party (1979), 440 U.S. 173, 59 L. Ed. 2d 230, 99 S. Ct. 983, which invalidated, on constitutional grounds, an earlier provision in section 10--2 that effectively required a new party to present more signatures to run a candidate in the City of Chicago than statewide. The Majority's construction of the statute produces a similar disparity. When statutory language is reasonably susceptible to several interpretations, a construction favoring its constitutionality will be preferred. (See People v. Orth (1988), 124 Ill. 2d 326, 334; Cronin v. Lindberg (1976), 66 Ill. 2d 47, 60; see also Morrison v. Olson (1988), 487 U.S. 654, 682, 101 L. Ed. 2d 569, 600, 108 S. Ct. 2597.) As the record in this case demonstrates, there are several narrower alternatives to the majority's interpretation of the provisions of section 10--2 pertaining to signature requirements. None of those alternatives would compel the harsh result of invalidating the entire ticket for the failure to present a total of 50,000 signatures for the combined components of the Cook County slate.

Finally, the court unnecessarily offers advice to Harold Washington Party candidate R. Eugene Pincham, Sr., that he may continue to run as a Democratic candidate for the position of county commissioner, for which he previously qualified through primary election. His eligibility to run as a candidate of that party is not at issue here, however, and candidate Pincham is well aware of his rights and obligations under the Election Code. He needs no instructions from the majority with respect to those matters.

The formation of political parties and the freedom to vote for candidates of one's choosing are fundamental rights under both the Federal and State Constitutions. (Illinois State Board of Elections v. Socialist Workers Party (1979), 440 U.S. 173, 59 L. Ed. 2d 230, 99 S. Ct. 983; Anderson v. Schneider (1977), 67 Ill. 2d 165.) The various provisions of the Election Code deserve a liberal construction so that those rights may be fulfilled. The court's decision in the present case is not compelled by a fair reading of the relevant statutes and unnecessarily hampers voters of this State in the exercise of their rights.

For the reasons stated. I respectfully dissent.

CHIEF JUSTICE MORAN and JUSTICE RYAN join in this dissent.

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Appendix C 15-24

Cook County, Illinois Circuit (Review) Court Order of September 10, 1990 removing the HWP and its candidates from the Cook County, Illinois November 6, 1990 general election ballot 15-24

No. 90 CO 00238
90 CO 00244

IN THE
CIRCUIT COURT OF COOK COUNTY ILLINOIS
COUNTY DEPARTMENT, COUNTY DIVISION

BARBARA J. NORMAN, JANICE H. ROBINSON, DONALD PAMON, HELIDA R. RICHARDSON, TOMMY BREWER, CHARLES W. ALEXANDER, DOROTHY C. HOGAN, WILL LAWRENCE, KENNETH G. HOPKINS, R. EUGENE PINCHAM, ROBERT E. PINCHAM, JR., ROBERT E. BROOKS, PERCY V. COLEMAN, VIVIAN D. STEWART-TYLER, JAMES A. DEANS, DINO F. McNEAL, MARY KING CRISS, DAVID T. PERSONS, MELLO SAM H. CLORA, JUDY MARIE HAWTHORNES, CHESTER LeSURE, CELIA DUNCAN, DON C. PASSMORE, JR., and BOBBIE B. SMITH,

Petitioners

vs.

STANLEY T. KUSPER, JR., AURELIA PUCINSKI and ERNESTO D. BORGES constituting THE COOK COUNTY OFFICERS ELECTORAL BOARD; and DOROTHY REED, VALERIE A. SUTTON, PATTON L. FEICHTER, ERVIN S. RICKS, DAVID BARRERA

Respondents

ORDER

This consolidated cause coming to be heard on petition for judicial review from an order of the Electoral Board filed August 29, 1990. Harold Washington Party filed candidates for County Board Pre6ident, Assegsor, Treasurer, Commissioners of the Board of Appeals, Superintendent of the Educational Service Region, State's Attorney, Clerk, Sheriff, County Commissioner and Commissioners of the Metropolitan Water Reclamation District.

Seven separate findings were made by the Board:

1.) The Electoral board was legally constituted.

2.) The objections were filed on time.

3.) Use of the name Harold Washington Party did not conflict with §10-5 of the Election Code.

4.) Candidate R. Eugene Pincham, Sr. can run for County Commissioner under the Harold Washington Party name after being defeated as a democrat for County Board President.

5.) The Harold Washington Party failed to receive the required number of signatures on their petition for Suburban County Commissioners and Metropolitan Water Reclamation District candidates.

6.) Objector did not offer sufficient proof to warrant a binder check.

7.) Judicial candidates did not need to be included on the Harold Washington Party's slate to create a complete slate of county candidates pursuant to the election code.

The following Board rulings are in dispute:

1.) Use of the name Harold Washington Party did not conflict with §10-5 of the Election Code.

2.) Candidate R. Eugene Pincham, Sr. can run for County Commissioner under the Harold Washington Party name after being defeated as a democrat for County Board President.

3.) The Harold Washington Party failed to receive the required number of signatures on their petition for Suburban County Commissioners and Metropolitan Water Reclamation District candidates.

4.) Judicial candidates did not need to be included on the Harold Washington Party's slate to create a complete slate of candidates pursuant to the election code.

RULINGS

I. As to the use of the name Harold Washington Party this court, on other grounds, affirms the decision of the Board.
This court reasons as follows:

A.) The Harold Washington Party became an established political party in Chicago pursuant to 10-2 of the election code at the time of the April, 1989 Mayoral election.

B.) While Timothy C. Evans was the only candidate of the Harold Washington Party, his only power, pursuant to §10-2 of the Election Code, was the ability to appoint interim committeemen.

C.) Section 10-2 states as follows:

> A political party which, at the last election in any congressional district, legislative district, county, township, municipality or other political subdivision or district in the State, polled more than 5% of the entire vote cast within such territorial area or political subdivision, as the case may be, has voted as a unit for the election of officers to serve the respective territorial area of such district or political subdivision, is hereby declared to be an established political party within the meaning of this rticle as to such district or olitical subdivision. (emphasis added)

D.) For the purpose of determining a party's status as an established political party, within the meaning of §10-2 of the Election Code, this court recognizes that the City of Chicago and the County of Cook are separate political subdivisions.

E.) County Commissioners are County officers. Since the Harold Washington Party was an established political party only in the political subdivision that is the City of Chicago, only candidates for city offices are prohibited by §10-5 of the Election Code from running as a new political party within the City of Chicago. Section 10-5 of the Election Code states that "Such party shall not bear the same name as, nor include the name of

F.) any established political party." §7-4(6) of the Election Code defines "County Office" as "an office to be filled by the qualified electors of the entire county." These County Commissioners are not being voted on by citizens of the entire county, some being voted in by city voters and some by suburban voters only. This provision also states that "County office also includes the assessor and Board of Appeals and County Commissioners and President of County Board of Cook County and County Board Members...." Since County Commissioner is specifically defined as a "county office," the establishment of the Harold Washington Party in the City of Chicago is irrelevant to the election at issue. (Emphasis added)

G.) Under this construction of §10-2 of the Election Code, one may expand an established political party from one political subdivision to another merely by complying with the new political party requirements of §10-2. Construing §10-2 as written limits the application of §10-5, which deals with the concepts of party stealing and voter confusion. It is not the function of this court to legislate. The legislature may, if it sees fit, re-draft these sections to address these concerns.

II. The court finds that the Board properly ruled that the suburbs are a separate component of Cook County under §10-2 of the Election Code. ThiS statute requires that the new party obtain an appropriate number of signatures in each separate component to place candidates on the ballot. Each component of the petition for each district from which an officer is to be elected must be signed by qualified voters of the district equalling in number not less than 5% of the voters in the political subdivision or a number equivalent to 1% of the voters in the State of Illinois, not to exceed 25,000. The Board's ruling as to the exclusion of candidates for County Commissioner from the suburbs was correct.

III. The Board's inclusion on the ballot of candidates for County Commissioner from the city was incorrect.

A. This Court finds that §10-2 of the Election Code states as follows:

In the case of a petition to form a new political party within a political subdivision in which officers are to be elected from districts and at large, such petition shall consist of separate components for each district from which an officer is to be elected. . . . **Each component** of the petition for each district from which an officer is to be elected must be signed by qualified voters of the district equalling in number not less than 5% of the number of voters who voted at the next preceding regular election in such district at which an officer was elected to serve the district. The entire petition, **including all components**, must be signed by a total of qualified voters of the entire political subdivision equalling in number not less than 5% of the number of voters who voted at the next preceding regular election in such political subdivision at which an officer was elected to serve the political subdivision at large.

B. The failure to obtain 5% support or 25,000 signatures for the suburban County Commissioner candidates voids the entire slate of Cook County candidates of the Harold Washington Party petition for two reasons.

1. It fails to comply with §10-2 of the Election Code's requirement of 5% or 25,000 signatures **from all components**.

2. Non-compliance with the suburban component is a failure to file a complete County slate.

a.) Anderson v. Schneider, 67 I11.2d 165, 176, 365 N.E.2d 900, 904, (1977), states that the complete slate requirement of §10-2 of the Election Code confers no authority for the removal of all the candidates because one is unqualified.

b.) In the case at bar, the entire slate of suburban Cook County Commissioners were unqualified. Anderson is inapposite to these facts.

IV. Cross-appellants suggest that §10-2's component aspect is unconstitutional. An Amicus Curiae brief was filed on behalf of the Independent Voters of Illinois - Independent Precinct Organization. A reviewing court will decide a constitutional question only where it is essential to the disposition of the case. In re Application of the County Collector of Kane County for Judgment for Deliquent Taxes

for the Year 1985, 172 Ill.App.3d 897, 122 Ill.Dec. 769, 527 N.E.2d 141 (2d Dist. 1988); citing Bender v. City of Chicago, 58 I11.2d 284, 287, 319 N.E.2d 34 (1974). This case is disposed of on other grounds. The constitutionality of §10-2 of the Election Code need not be addressed.

V. This Court finds that the Board's ruling as to the exclusion of Metropolitan Water Reclamation District candidates was correct, but for the wrong reasons.

A. The Board ruled that the Metropolitan Water Reclamation District was a separate "component" of Cook County under §10-2 of the Election Code.

B. The Court finds that, under §10-2 of the Election Code, the Metropolitan Water Reclamation District is a separate political subdivision and not a component of Cook County, as was held by the Board.

C. Political subdivision is defined as "any unit of local government in which elections are or may be held." Ill.Rev.Stat. Ch. 46 §1-3(6).

D. Since the Metropolitan Water Reclamation District and Cook County are separate units of local government, they are distinct political subdivisions.

E. Section 10-2 of the Election Code requires a new political party to obtain signatures of 5% of the voters or a number equivalent to 1 of the voters in the State of Illinois, not to exceed 25,000. The Harold Washington Party failed to obtain the requisite signatures for the Metropolitan Water Reclamation District, making exclusion from the ballot proper.

F. It should be noted that failure to garner the appropriate voter support in the Metropolitan Water Reclamation District has no affect on the complete slate of Cook County candidates. Section 10-2 requires _ the filing of a complete slate "for all offices to be filled in the... political subdivision.n The slate in the political subdivision of Cook County is complete without the addition of candidates from the political subdivision of the Metropolitan Water Reclamation District. (emphasis added)

VI. As to the issue of whether a failure to include judicial candidates on the Cook County slate was a failure to file a complete slate, this court overrules the Board as follows:

A.) That §10-2 of the Election Code requires that where a petition to form a new political party within a political subdivision is filed, it must contain a component petition for each district contained in that subdivision from which an officer is to be eiected.

B.) §1-3(14) of the Election Code defines "district" as including "judicial districts" and "judicial circuits."

C.) §10-2 of the Election Code requires a list of candidates for "all offices to be filled in the political subdivision at large." Judges to be elected in the Cook County Judicial Circuit are such officers.

D.) That the exclusion of judicial candidates on the slate was a failure to fulfill the "complete slate requirement" of the Election Code. This failure completely invalidates the petition.

VII. The Court affirms the Board's holding that the party switching of R. Eugene Pincham, Sr. did not violate §10-2 of the Election Code. Due to the deficiencies stated above, which invalidate the Harold Washington Party petition, Mr. Pincham may not run as a Harold Washington Party candidate.

VIII. Cross-appellant alleges that there was fraud in objections five and six of the objectors' petition. There was insufficient evidence to established a prima facie case for such fraud.

IT IS THEREFORE ORDERED:

1. That the challenged rulings of the electoral board are hereby reversed in so far as they are inconsistent with this opinion.
2. That the Cook County and Chicago oard of Election Commissioners are hereby enjoined from printing the name of Harold Washington Party or the names of any candidates thereof, either with the designation of the Harold Washington Party or without any party designation on the general election ballot for the election to be held on November 6, 1990.
3. That the Electoral Board shall forthwith issue an amended Electoral Board decision in accordance with the rulings herein.
4. That the prior order of September 14, 1990 enjoining the Cook County Clerk and Chicago Board of Elections Commissioners from printing ballots for the November 6, 1990 general election and is hereby vacated.
5. That this order is final and appealable.

ENTERED:

September 20, 1990

DATE

/S/ Eugene L. Wachowski

Hon. Eugene L. Wachowski
Circuit Court 0078

Page

Appendix D 25-55

Cook County Officers Electoral Board order and Decision of August 29, 1990 placing the HWP and its candidates on the Cook County, Illinois November 6, 1990 general election ballot 25-55

BEFORE THE COUNTY OFFICERS ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF OBJECTIONS
TO THE NOMINATION PAPERS OF CANDIDATES FOR
NOMINATION TO OFFICES FROM DISTRk OR DIVISIONS
WHICH ARE COTERMINOUS WITH OR LESS THAN THE
COUNTY OF COOK AND STATE OF ILLINOIS

OBJECTIONS OF THE HAROLD WASHINGTON PARTY, A NEW POLITICAL PARTY, AND TO EACH OF THE FOLLOWING CANDIDATES OF THE HAROLD WASHINGTON PARTY:

COUNTY-WIDE
BARBARA J. NORMAN, JANICE H. ROBINSON, DONALD PAMON, HELDIA R. RICHARDSON, TOMMY BREWER, CHARLES W. ALEXANDER, DOROTHY C. HOGAN, WILL LAWRENCE, KENNETH G. HOPKINS;

INSIDE THE CITY OF CHICAGO
R. EUGENE PINCHAM, ROBERT E. PINCHAM JR., BARBARA J. NORMAN, PERCY V. COLEMAN, VIVIAN D. STEWART-TYLER, JAMES A. DEANES, DINO F. McNEAL, MARY KING CRISS, DAVID T. PERSONS, HELEN E. JONES;

OUTSIDE THE CITY OF CHICAGO
ROBERT E. BROOKS, JR., MELLO SAM. H. CLORA, JUDY MARIE HAWTHORNE) CHESTER LeSURE, CELL DUNCAN, DON C PASSMORE, JR., BOBBIE J. SMITH.

DECISION

The duly constituted COUNTY OFFICERS ELECTORAL BOARD, consisting of the HONORABLE STANLEY T. KUSPER, JR., HONORABLE AURELIA PUCINSKI and HONORABLE ERNESTO D.

BORGES, public member, replacing the HONORABLE CECIL A. PARTEE, organized by law in response to a Call issued by the HONORABLE STANLEY T. KUSPER, JR., Chairman of said Electoral Board, for the purpose of hearing and passing upon of objections to the nomination papers of candidates for normnation to County-Wide Offices and to the Office of Cook County Commissioner from Chicago and from outside the City of Chicago having convened on August 14, 1990 in room 569 of the Cook County Building, in the City of Chicago, County of Cook and State of Illinois, and having heard and determined the objections to the petitions in the above entitled matter, finds that:

1. The said Electoral Board has been legally constituted according to the laws of the State of minois;

2. Objections to the nomination papers of the candidate herein were duly filed;

3. A Call to the hearing on said objections was duly issued and was caused to be served upon the members of the Electoral Board, the objector and the candidate by mail and by personal service as provided by statute;

4. A public hearing was held on these objections on August 14, 1990, and subsequent dates;

5. There were present at such hearings the following persons, amongothers:

a) Honorable Stanley T. Kusper, Jr., Chairman; Honorable Aurelia Pucinski, Member and Honorable Ernesto D. Borges, Member;

b) The objectors, by their counsel;

c) The party and its candidates, by their counsel;

6. All evidence, if any, that was tendered by those appearing at the hearing was heard and considered by the Board;

7. All arguments, if any, that were made at the hearing were considered by the Board;

8. The Board, having heard oral argument and, considering the legal memoranda and all other evidence presented, hereby makes the findings contained in the attached Opinion.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Objections to the nomination papers of the HAROLD WASHINGTON PARTY, for nomination of its candidates to County-Wide Offices, and for its candidates to COOK COUNTY COMMISSIONER inside the City of Chicago, are hereby DENIED and as to the party and its candidates for Cook County Commissioners outside the City of Chicago is GRANTED, in conformity with the findings attached hereto and made a part hereof DATED, at Chicago, Illinois this 29th day August, 1990.

/S/ Stanley T. Kusper, Jr.

STANLEY T. KUPSER, JR., Chairman

/S/ Ernesto D. Borges

ERNESTO D. BORGES, Public Member

Concurring in Part and Dissenting in Part:

/S/ Aurelia Pucinski

AURELIA M. PUCINSKI, Member

COOK COUN'IY OFFICERS ELECIORAL BOARD CONSOLIDATED OPINION

BACKGROUND

These cases concern objections to various petitions filed by candidates of the Harold Washington Party for election at the November, 1990 General Election. The Harold Washington Party ("HWP") filed as a "new" political party under the provisions of Article 10 of the Election Code.1 HWP filed candidates for County Board President, Assessor, Treasurer, Commissioners of the Board of Appeals, Superintendent of the Educational Serice Region, State's Attorney, Clerk, Sheriff, County Commissioner and Commissioners of the Metropolitan Water Reclamation District.

Dorothy Reed, Valerie Sutton, Patton Feichter, Ervin Ricks and David Barerra filed objectiom to these candidates pursuant to §10-8, charging that the HWP petitions lacked the requisite number of signatures and that they otherwise &iled to meet the comtraints of Article 10.

This Board is constituted of the County Clerk, who serves as Chairrnan; the Clerk of the Circuit Court and the State's Attorney or an Assistant State's Attorney designated by him. Becausc the incumbent State's Attorney, Cecil Partce, would be running against Janice H. Robinson, a challenged HWP candidate, Partee recused himself from the Board, as required by §19. The statutorily authorizcd substitutc members, Treasurer

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[1]Unless otherwise specified, all statutory references arc to the Illinois Election Code, Ill.Rev.Stat. (1989) ch. 46.

Edward Rosewell and Sheriff James O'Grady, are also candidates for re-election and were likewise disqualified. The Chief Judge of the Circuit Court, the Honorable Harry Comerford, then appointed attorney Ernesto D. Borges, Jr. as a public member of the Electoral Board.

The Board met on August 14, 1990, and thereafter to comider the objections. Since most of the objections were of a legal, rather than factual, nature, they were determined by the Board's decisions on the candidates' motiom to dismiss. The Board made oral rulings on some of these issues as they were presented on a daily basis. Due to the likelihood these cases will be appealed on judicial review, and because some of the issues raised represent new advances in electoral jurisprudence, we have issued this opinion detailing the Board's reasoning for these rulings.

I

DISQUALIFICATION OF THE ELECTORAL BOARD

The HWP first suggests that the Board should be disqualified because its members are "interested" in the litigation.[2] In support of this motion, HWP submitted an unverified document labeled "Respondent Harold Washington Party's Objection to the Composition of the Electorial [sic] Board for [sic] Cook County." The objection names various democratic officials who, it is allegcd, oppose the HWP. The objection feebly attempts to link two members of the Board, who are elected democratic officials, with the anti-HWP cornments of these officials. The objections conclude with a one-sentence

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[2]HWP asked the Board to transfer this cause to the State Board of Elections. There is no statutory authority to trarsfer arl aaion that, pursuant to the Election Code, must be heard before this Board.

declaration that "It is axiomatic that fundamental Due Process and Equal Protection are denied petitioners[3] because the County Officers Electorial [sic] Board and it's [sic] members are interested parties in the instant litigation." The HWP does not direct the Board's attention to any relevant case law or legal authority to support this claim.[4]

The Board is acutely cognizant of the serious nature of the objections and the great public interest in them. The Board is, as always, aware of its sworn duty to uphold the law and constitutions of the United States and State of Illinois.

However, the statutes clearly designate certain officials as members of the Electoral Board. Section 10-9 permits a board member to step down in circumstances where "any member of the appropriate board is a candidate for the office with relation to which the objector's petition is filed". That statute also provides for substitution of the dismissed member.

This issue was raised in *Ryan v. Londek*, 111 Ill.Dec. 97, 512 N.E.2d 1 (1987). In *Ryan*, the Board contained persons who were running on the same new par slate as the candidate. The Appellate Court held, although a majority of the Board were party members, the composition of the Board did not deny the objector due process, since judicial review of the Board's decision was readily available, and since the legislature failed to provide for recusal of members for any reason other than that specified in the statute.

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[3][Footnote by the Board]. The Board presumes that the word "Petitioners" is meant to refer to the HWP candidates, who are actually respondents in this litigation.

[4]Moreover, in these circumstances, the right to an impartial judge implicates only the right to due process of the law, rather than equal protection.

The *Ryan* board contained persons who were actually running on the same new party slate as some of the litigants. This Board contains no such persons, and the link urged by HWP is considerably more tenuous than the link of the Ryan Board to the litigants, which was found not to violate the candidates' due process rights. Thus, the HWP's motion to disqualif the Board is denied.

TIMELINESS OF FILING OF THE OBJECIIONS

The HWP next moved to strike and dismiss the objections on the basis that they were not timely filed. It is well settled that absent a timely-filed objection, the nornination papers are presumed valid and the candidates' names shall appear on the ballot. §10-8.

Section 10-8 specifies that the objections must be made in writing 4ithin five business days after the last day for filing the norninating papers. The HWP filed their petitiom on the last possible day, Monday, August 6, 1990. HWP contends that five business days after August 6 was Saturday, August 11, 1990. The objections were not filed until Monday, August 13.

In support of its position, HWP cites *Mierswa v. Kusper*, 121 m.App.3d 430 (lst Dist. 1984). Micrswa filcd her objections on the Monday following the Clerk's adrriinistrativcly sct Saturday deadline. The Clerk refused to convene the Electoral Board o hear her objcctions, contending that the objections were not timely filed since his office was open on Saturday. Mierswa prayed for a writ of mandarnus cornrnanding the Clerk to convene the Board to hear her objections. The Appellate Court found that the objections were not timely filed, since the Clerk was required by

law to keep his office open to noon on Saturday--precisely the position urged by the HWP here.

However, *Mierswa's* reach has been limited by a legislative response to this commonly-litigated scheduling quandary. Just last year, the General Assembly passed Public Act 86-873, which defines "business day" as "any day in which the office of an election authority, local election official or the State Board of Elections is open to the public for a minirnum of 7 hours." That Act also clarified the computation of the . e for election activities by specifying that if the last day for doing an act required under the Election Code falls on a Saturday, the deadline moves to the following Monday.s §1-5. Since the Clerk was not open for 7 hours on August 11, 1990, but was open for 8 hours on August 13, the last day for filing objections to the HWP petitions was August 13.6 HWP's motion to dismiss for failure to file the objections on time is denied.

III

USE OF THE NAME HAROLD WASHINGTON PARTY"

The objectors claim that the candidates cannot use the name "Harold Washington Party" because it is an established political party in the City of Chicago. This objection is made against all petitions filed by the HWP for county, city, suburban and Water Reclamation District officcs.

The Board takes administrative notice of the fact that Timothy C. Evans formed

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[5]Assuming, of course, that the Monday is not a holiday.

[6]We also note that the election calendars published by the Chicago Board of Election Commissioners, the Cook County Clerk and the State Board of Elections all designate August 13 as the last day for Sling objections.

the Harold Washington Party for his candidacy for Mayor of Chicago in 1989, and that Evans received more than 5% of the vote in his unsuccessful effort. Thus, pursuant to §10-2, the Harold Washington Party became, and is presently, an established political party in the City of Chicago.[7]

Section 10-5 prohibits new political party petitions for nomination from bearing the same name as, or including the name of, any established political party as defined in Article 10. The obvious purpose behind this prohibition is to prevent persons who are not affiliated with a party from "latching on" to the popular party name, thereby promoting voter confusion and denigrating party cohesiveness.

When the HWP became established in the City of Chicago, Evans, as the candidate of the party, was eligible to select party committeemen as were "necessary for the creation of a provisional party organization and provisional managing committee of the party." §10-2. These committeemen serve until the next primary election at which established political party committeemen are elected.[8] Evans testified that he has not as yet, appointed any such committeemen, but that he, as candidate, authorized the HWP candidates to use the party name.[9]

[7]The Board notes that the municipality, the City of Chicago, is territorially different from the Cook County Board District consisting of that part of Cook County lying within Chicago (m.Comt. (190) Art. VII, § 3(c).) The City of Chicago includes territory within DuPage County. However, for the Board's purposes, the distinction is not relevant.

[8]In fact, several persons attempted to run as HWP ward committeeman candidates in the 1990 primary. Objections were filed to their candidacies by no less than Mr. Evans, who contended that ward committeemen could only be elected in the next "presidential" election year, or 1992. The Appellate Court agreed, and the candidates were stricken from the 1990 ballot.

[9]The Board specifically finds that Evans, pursuant to 10-2 has no

The Board believes that the purposes of the statute, to stop "party stealing", and confusion are important ones. The Board was concerned that confusion would exist if the Chicago HWP was indeed, not the same as the "new political party" in the County, named the HWP. A question that needed to be resolved was whether the new HWP was one in the same as the Chicago HWP involving the same people. Further, the Board finds that the prohibition of §10-5 does extend to the county HWP candidates now before this Board, since the HWP is an established party as defined by Article 10.[10] A strict reading of the statute would have the constitutionally suspect effect of stifling the creation of a new major political party which starts in a small jurisdiction and then attempts to grow across the state. Such a narrow reading would unduly burden the candidates' rights to freedom of association. Balancing the candidates' rights against those of the state in ensuring the integrity of the electoral process required the Board to inquire as to the legitimacy of the connection between the county HWP and the established Chicago HWP.

Evans' testified that the County HWP was granted permission by him (as the only candidate of the Chicago HWP party) to use the party name as an "official" branch of the Chicago HWP. Although Evans is not the statutory party chairman he is the orlly person empowered by the Election Code to act in any official capacity for the HWP.

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authority to act as *Chairman* of the HWP since there is no statutory authority for such designation until committeemen are appointed or elected and then elect a Chairman to lead the newly established political party.

[10] However, Chairman Kusper believes the 15 prohibition does not extend to the newly formed HWP since it is forming "Countywide" and not within the same political subdivision (City of Chicago) as the established HWP.

time, allowed to act as specified above for the party. Evans testified that he gave permission for use of the narne prior to the county HWP petitions being circulated and is the only person to testify in these regards.

The objectors' reliance on *Ballentine v. Bardwell*, 132 Ill.App.3d 1033, and *Doty v. REP Party*, 97 Ill.App.3d 316 is misplaced. In neither case was the new political party which adopted the name of an established party merely an expansion of the existing party into a different jurisdiction. In each case, the new party was attempting to form in the same jurisdiction as the existing party. Here, the evidence demonstrates that it is the same HWP which is reaching out to expand into new political territory. Since the purpose of the statute is to protect the existing party and its supporters against nonsupporters from borrowing its goodwill, the statute has no bearing here.

We have considered the affidavits of Nancy Jefferson and David Reid and find them to be of no evidentiary value, since neither person was a candidate or official of the HWP as designated by statute.[11]

Thus, the motion to dismiss the objection that the name "Harold Washington Party" could not be used by the candidates, is granted.

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[11]State statutory restrictions on political party organization are suspect as they unduly burden the party members' freedom of association rights. San Francisco Coun Democratic Committee v. Eu, 826 F.2d 814 (9th Cir. 1987), afd, 109 S.Ct. 1013 (1989). However, Illinois grants these party oflcials certain public authority, thus legitimizing the minimal structural framework established by Articles 7 and 10 of tbe Election Code. Kluk v. Lang, 12,5 I11.2d 306 (1989).

IV

THE DUAL CANDIDACY OF R. EUGENE PINCHAM, SR

R. Eugene Pincham, Sr. is a former Circuit and Appellate Court judge who resigned from the court to run for President of the Cook County Board in the March, 1990 democratic primary. Pincham ran also for Cook County Commissioner to be elected from inside Chicago.[12] Pincham lost for President to Richard Phelan, but did win one of the ten nominations for a Chicago board seat.

Pincham is now running for Cook County Commissioner as a candidate of the Hwp.[13] Section 10-2 of the Code states:

> A candidate for whom a nornination paper has been filed as a partisan candidate at a primay election, and who is defeated for his or her nornination at the primary election, is ineligible for nomination as a candidate of a new political party for clection in that general election.

The objectors charge that since Pincham lost his bid for President, he is barred from running for Commissioner. At first glance, the statute indeed appears to prohibit party-switching between the primary and general elections. However, the statute is commonly referred to as a "sore loser" statute,[14] and was enacted in response to the

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[12]A dual candidacy for President and Commissioner is exprcssly permitted by Ill.Const. (1970) Art. VII, § 4(b).

[13]We decline to speculate on the legal effect of Pincham's simultaneous candidacy for the same office on two different party tickets, a practice seldom seen in American politics (except in the State of New York)and unprecedented in minois. We note that the objectors merely charged that the "sore loser" clause of §12 prevented Pincham from running as a new party candidate.

activities of John Nimrod, an incumbent republican state senator who lost the 1982 primary and ran undaunted to keep his senatorial seat as the candidate of the 'axpayers for Nimrod" party. The state may constitutionally prevent a candidate from having more than one bite at the same apple. It may also constrain one's political activities to one political party for one season. Whether minois law prevents Pincham, under e unusual circumstances, from running for Commissioner as a HWP candidate, is question faced by this Board.

Pincharn won his primary for county comTiissioner and now wishes to switch parties. The statutes contain no prohibition against such conduct.[15] In our view, Pincham's loss for President should not bar hirn from seeking a commissionership under the HWP label. The language of the statue specifically refers to one who is defeated for "his or her nomination" at the primary, lending credence to HWP's argument that the statute is meant only to "lock-out" the sore loser from running for the precise oflce he lost at the primary. The legislative history of the statute supports this conclusion as well.

Finally, we note that when an election law is unclear, the benefit of the doubt must be given to the candidate. *Merz v. Volberding*, 94 Ill.App.2d 111 (1981). If the legislature had meant to prohibit party swiiching in the

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[14]For an exhaustive constitutional analysis of "sorc loser" statutes and "party switching" prohibitions, see Citizens for Moore v. Clicao Board of Elecion Commissioners, 599 F.Supp. 662, question certified 781 F.2d 581, ccrtified question declincd to be answered 94 Ill.Dec. 69, opinion after certed question declined 794 F.2d 1254, on remand 665 F.Supp. 1334, afPd 845 F.2d 144 (1989).

[15]In fact, this is precisely what Adlai Stevenson did in 1986, when he withdrew as the democratic norninee for Governor and ran undcr the Illinois Solidarity party label.

unusual manner used here, it could have done so with language sufficiently clear to put the candidate on notice of the activities which are prohibited. Pincham won his nomination for county commissioner. The statutory language regarding a candidate who is defeated thus only would apply to his loss for President. We find that his past candidacy for President is not relevant to the sore loser statute and that it is thus not a bar to his candidacy.

Thus, HWPs motion to dismiss the objection to Pincham's candidacy on this ground is granted.

V

THE MINIMUM SIGNATURE REQUIREMENTS

Since HWP desired to run candidates not only for county-wide offices but for county commissioners from the two county board districts as well, and for ComIlussioners of the Metropolitan Water Reclamation District, it utilized the "component" form of nominating petition. Section 10-2 requires that such petition consist of separate components for each district from which an officer is to be elected. Each component must be circulated only within a district of the political subdivision involved and signed by electors who reside therein. Further, each sheet of the petition must contain a complete list of the candidates for the at large positions and those from the particular district. Each district component must contain the signatures of not less than So of the voters who voted at the next preceding

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[16]In this case, that is the November, 1988 election for county offices.

[17]That requirement is lo of the statewide voters, or 25,000, whichever is less. For this election, the 25,000 figure is less and is thus applicable.

regular election in the jurisdiction[16]. Further, the entire petition for County-Wide Candidate must be signed by not less than So of the voters who voted at the next preceding regular election in the entire junsdiction.

In a large county such as Cook, this So signature requiremcnt works out to be considerably larger than that required of statewide candidates.[17] Such an illogical scheme was struck down in Socialist Workers Pary v. Board of Elections, 440 U.S. 13 (1989). In response to that decision, the legislature amended §10-2 to provide that if the local requirement exceeds the state requirement, the latter will govern, and local candidates need only collect what is required of the state candidates. Here, that means that the HWP candidates needed 25,000 signatures on each component and a total of 25,000 for their county candidates.

HWP filed approximately 44,000 signatures on the county/city petitions and only approxirnately 7,800 on the county/suburban component. The candidates for Commissioner of the Metropolitan Water Reclarnation District had approxirnately 8,000 signatures on their component. While the 44,000 signatures on the county/city component is sufficient alone to support both the city candidates and the county c ndidates, the objectors charge that the failure to include enough suburban signatures on the suburban component is fatal not only to the suburban candidates but to the rest of the ticket as well.

HWP responds by requesting that the Board count the excess city signatures toward the suburban total. The Board cannot do this, since the city signers did not petition to norninate the suburban candidates. Only persons residing in the suburbs may nominate those candidates. HWP also urges the Board to find the suburban petitions valid because the 7,800 signatures demonstrate the "modicum of support" required by casc law.

The Board finds that the 25,000 signature requirement for suburban candidates is appropriate, ince there are over 1,000,000 voters in suburban Cook County, and since the HWP candidates were not tested in a primary election.[18] The fact that 44,000 signatures were collected in Chicago, which only has slightly more voters than suburban Cook, supports the Board's position that the 25,000 suburban requirement would be attainable if the HWP had a modicum of support in that jurisdiction a fact which the HWP has not shown.[19]

We further find that the deletion of the suburban component and/or the Metropolitan Water Reclamation District component is not fatal to the remainder of the ticlcet. The statute is silent on the implementation of the objector's suggested draconian penalty against a party which fell short in it's attempt to field suburban-only candidates and Metropolitan Water Reclamation District candidates, but which demonstrated enough support to qualify on the county and city ballots nonetheless. Such an action would disqualify HWP from the city and county ballots for which it othene fulfilled all statutory requirements. The objectors have not directed the Board's attention to any state interest that would be furthered by such a penalty, thus adding credence to the Board's concern that disqualification of HWP merely for failure to meet the suburban and/or Metropolitan Water Reclamation District requirement would be constitutionally infirm.

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[18] The signature requirements for new political parties are significantly higher than for established parties, because new parties automatically gain a place on the general election ballot for which the established candidate had to fight in a primary.

[19]Further, the Electoral Board has no statutory authority to alter or vary from the rninimum signature requirement as set forth in thc Elcction Code. Thc question of what is a minimum showing of support (if 25,000 is too much) reposes in a court of competent jurisdicton.

The motion of the objector to find the nomination papers of Robert E. Brooks, Jr., Mello Sam H. Clorat Judy Marie Hawthorne, Chester LeSuret Celia Duncant Don C. Passmorc, Jr. and Bobbie J. Srnith as candidates for thc Cook County Board of Commissioncrs to be elected from outside thc City of Chicago insuficient is sustained.

The Board grants the motion of the HWP to strike and dismiss the objection that the remainder of the slate must fall along with the suburban candidates.[20]

Further, as noted above, the HWP candidates for the Metropolitan Water Reclamation District failed to file the 25,000 required signatures. The MWRD petitions contain only about 8,000 signatures on their face. Assuming that the MWRD is includable in the "component" petitions described above, the same analysis applies as did for the insufficient suburban signatures. Since the petitions demonstrate on their face the candidates' failure to meet the statutory requirement, the objector's motion to find the nomination papers of Jefferey V. Coleman, Belgee L. Faulkner and Darnell Fourte insufficient is sustained.[21]

VI

ALLEGATIONS AS TO SPECIFIC SIGNATURES (THE "BINDER CHECK")

Having determined that the MWRD and suburban petitions fail to contain a sufficient number of valid signatures, we turn to the remaining

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[20] In Anderson v. Schneider, 167 Ill.2d 165 (1977), the Supreme Court allowed the entire slate township candidates and the party name to remain on the ballot after one of the members of the slate was removed by an Electoral Board. Justice Dooley, writing for the majority, found that the sanction of removal of the party name and/or candidates was not necessary to protect the integrity of the electoral process.

[21] The attorney for the objector withdrew the allegations which relate to the unsufficiency of individual signatures.

city/county petitions.

The objectors filed objections to all 44,000 city /county HWP signatures on the basis that the signatures were not signed in the voters' own proper persons and that the signers were not duly registered voters. The objectors filed 6,000 appendix-recapitulation sheets corresponding to the sheets of the HWP petitions, on which as "X" was marked in each box corresponding to those allegations. In fact, the Board finds from the evidence presented that Appendix-Recapitulation sheets were photocopies from a "master sheet."

The objectors' contention that every one of the signatures filed by the HWP was invalid strains credulity. Even in the most blatant cases of petition fraud[22], some signatures will be valid. The candidates themselves can be presumed to have signed their own petitions.

The statute governing this Board provides that the objector's petition shall "state fully" the nature of the objection. The Electoral Board then must take up the question as to whether the petitions are in proper form. The Board has the power to subpoena witnesses or evidence, and the Chairman must issue subpoenas upon request of any party for the production of relevant documents or persons. The statute explains in detail how the subpoena is enforced in cases of non-compliance.

The Board also must adopt rules of procedure governing the introduction of evidence. This Board's long-established rules provide that a "binder check" may be conducted to determine the validity of allegations such as forged signatures or nonregistered signers. The binder check takes place at the office of the election official having custody of the relevant

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[22]This Board is well-versed in identification of such schemes. *See, e.g., Canter v. Cook County Officers Electoral Board*, 170 Ill. App. 3d 364 (1988).

governmental records, and each side may monitor the election clerk's review of the materials and report to the board as to the validity of the objections. The partyies may then present additional evidence to the Board to refute the clerk's suggested findings.

The binder check procedure is a convenient way of disposing of numerous individual objections while permitting the Board to hear other matters in a limited time frame. It exists only because of the cooperation of the Cook County Clerk and the Chicago Board of Election Commissioners, neither of which is obliged to devote its staffs to such activities at the request of this Board. Both agencies have traditionally cooperated in binder checks because the procedure is a more efficient way to dispose of the objections than by subpoenaing the documents individually for inspection in the Board.

However, this Board has hesitated to make the binder check procedure into a "fishing expedition" for objectors who have failed to do their homework.[23] The statutory scheme provides that the candidates' nomination papers are deemed valid unless proved otherwise. The Board has declined to use its discretion to order a binder check when the Board believes that the objections may have not been compiled with the requisite degree of care or precision.[24] The Board understands that even the most carefully researched objections will often prove untrue. However, the Board must hold the objector to some standard or burden of proof so that the candidates are not improperly burdened with having to defend against

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[23]Member Pucinski, although concurring in this part of the decision, additionally feels a stricter rule should be considered in the future requiring a higher standard of proof necessary to allow a binder check.

[24] *See, e.g., Objections of Jessie B. Hoskins to the Nominating Papers of Cardiss Collins*. 85 COEB-RC 3.

these "fishing expeditions".

The HWP moved to dismiss the signature allegations on the basis that they were fraudulent. The Board noted the extensive nature of the objections and the apparent similarity to all the objections, along with the fact tha every single name was objected to for the same reasons. Consequently, the Board ordered that an evidentiary hearing be held to demonstrate how the objections were researched. The objectors' petition states that a 15% sampling was done of the HWP petitions, resulting in 53% of those signatures being invalid. In fact, there are no provisions for sampling certain signatures and then expanding a "likely" result from the sampling. The evidence presented by the objectors was insufficient for the Board to find a reasonable likelihood that a binder check or other manner of extensive evidentiary hearing would bring HWP below the 25,000 requirement.

The objectors' only witness on this point was Mrs. Bonnie McGuire, as aldermanic assistant. Mrs. McGuire was a credible witness. She testified that she had extensive experience in petition challenges, and that she reviewed a small sampling of the HWP petitions against February, 1990 poll sheets.[25] She also testified that no signatures were checked against the permanent binder cards to determine if the signature was not, in fact, the signature of whom it purported to be. She prepared these objections and tendered them to a Mr. Michael Carey and Mr. Ray Simon. Mr. Carey instructed her to insert additional objections so that every

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[25] While these poll sheets do nto represent the current registrations of voters could have moved, died or registered since February, 1990, they are of some relevance to the Board's consideration whether a good faith effort was made to ascertain the validity of the signatures objected to on the basis that the voter was not registered.

signature was objected to under the designation "Not Signed In Own Proper Person". Mrs. McGuire rightfully questioned this practice, since her limited, though thorough review had only resulted in the smaller number of objections she listed. Mrs. McGuire testified that Mr. Carey insisted that the additional signatures should be objected to so as to "preserve the objection for the record".

Mrs. McGuire also testified that she met the objectors only briefly at Raymond Simon's office. She explained her research to one of the objectors. Some of the objectors were not even present. Obviously, there was no way for these objectors to have obtained the information relevant to their objections other than through Mrs. McGuire. However, these objectors swore under oath that the objections were true. This lack of knowledge of the nature and accuracy of the objections gives the Board even more reason not to order a binder check.

Taking the only evidence presented by the Objector in its best light, produces only 2,810 specific objections.[26] Thus, the Objector attempts to expand from the 2,810 specific signature objections to a blanket objcetion including all 60,000 signatures.[27]

The Board sustains the objection in ¶5(s) of the objectors' petition to sheet 4063 since it is a non-conforming sheet, it being a page of a MWRD petition inserted in the county/city component and is invalid; the objection in ¶5(m) that a certain sheet did not bear the signature of a notary public and the objection in ¶5(r) as to sheet 3373 being a suburban/county

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[26] There were approximately 2,500 specific Objector's Exhibit A (Ex. 5 at the hearing); 120 objections relating to circulators; 190 objections to specific signatures from the Objector's Petition in chief.

[27] This includes suburban and MWRD signatures.

sheet inserted in the city component, are sustained.

The Board overrules the objection in ¶5(n) that the absence of a notary seal invalidates certain sheets. The Board finds that the sheet appears to have been duly sworn to before a notary public, and that the insertion of a seall is not as crucial to the integrity of the electoral process as the catual oath. *Bowe v. Board of Elections*, 79 Ill. 2d 469 (1980). Further, the Board overrules the objection in ¶5(o) since none of the petition sheets were challenged in the appendix recapitulation under the heading "Circulator Did Not Appear Before Notary".

The objectors claim that the sheets done by several "super circulators" contain a pattern of fraud that invalidates the sheets in their entirety.[28] No witnesses were presented, except for Mrs. Bonnie McGuire, who testified that in her experience it would seem to be "impossible" for a circulator to circulate as many sheets as stated in paragraph S(q). No further evidence was presented by the objector who rested his case after the Chairman of the Board repeatedly offered the opportunity to proceed and present evidence through witnesses or documents or othenvise. The objector presented no evidence which would substantiate the allegations or shift the bwden to arlswer to the HWP. In fact, the HWP had all of the questioned circulators, except one, present at the hearing ready to testify if the Board had found the objector had established a prima facia case, thus shifting the burden to the HWP to present a defense.

The Board further finds that even if the "incredible" circulator sheets were invalidated, the candidates would still have enough signatures to remain on the ballot. The Board also finds that the objectors failed in

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[28] *See, e.g., Fortas v. Dixon*, 122 Ill.App.3d 699 (1984); *Huskey v. Municipal Officers Electoral Board*, 156 Ill App.3d 201 (1987).

their burden to show a reasonable likelihood that a binder check would result in the invalidity of the petitions.

The Board also notes that the objectors have not requested that any records be subpoenaed from either the County Clerk or Chicago Board of Election ComITiissioners to support the validity of their objections. Thus, the objectors' request for a binder check is denied.[29]

[29] This ruling moots the candidates' objection to the Board's binder check rules which provided that objections would be sustained as to signatures for which binder cards could not be found.

VII

THE NECESSIIY TO INCLUDE JUDICIAL CANDIDATES ON THE SLA[illegible][30]

Section 10-2 of the Election Code provides that the new party petition must contain a complete list of the names of candidates of the party for "all offices to be filled in the political subdivision". This has been known in election law circles as the "complete slate requirement."

Having survived the objectors' challenges thus far, the HWP city/ county candidates now meet the complete slate requirement, the hurdle most troubling to the Board.

The objectors charge that the HWP did not file a complete slate for offices within the political subdivision of Cook County because it did nc: file candidates for any judicial office to be elected in Cook County.[31] However, there is nothing in the record as to whether a slate of judicial candidates were, or were not, filed with the State Board of Elections. Additionally, since there are no new judgeships on the November, 1990 ballot[32], all judgeships cited by objectors are to fill judicial vacancies.

[30] Member Pucinski does not join in this section of the opinion. For the reasons stated in her dissent, she would sustain the objection that the HWP did not file a complete slate for failure to include judicial candidates and find the nomination papers of the county and city candidates invalid.

[31] The objectors correctly point out that there are judgeships to be elected county wide, citywide within Chicago and suburb-wide, each of which matches a component of the petition. However, the suburban issue has been mooted by our decision above, and the analysis of the city judicial slate vis-a-vis city commissioner candidates is identical to our analysis herein of the county judicial slate issue. Thus, we adopt the county analysis as it relates to city candidates accordingly.

[32] The one additional judgeship for which nominations were made at the primary was invalidated by the decision of the Illinois Supreme Court in *CBA v. State Board of Elections*, No. 69823, (July 2, 1990, opinion

The judgeships at issue are unquestionably "offices". The question is whether they are to be filled in the same "political subdivision". The Election Code defines a "political subdivision" as any unit of local government, or school district in which elections are or may be held." §1-3(6). The judgeships are elected not from the County of Cook as a unit of local government, but rather from the Cook County Judicial District[33], which is coincidentally coterminous with Cook County.

The Board finds that the legislative intent behind the complete slate requirement is to require a complete slate for all similar offices which run as a group on a recurring basis. In this fashion, the advantages of a new party, rather than the detriments of independent candidacy (such as lower signature requirements) are conferred upon only those who demonstrate cohesiveness and support equivalent to that already demonstrated by the existing political parties.[34]

Moreover, judicial offices are state offices rather than county offices. Ill.Const. (1970) Art. VI. Section 10-2 of the Election Code distinguishes between counties and judicial districts in this context. That statute states that any group of persons desiring to form a new political party throughout any judicial district shall file with the State Board of Elections and that any such group desiring to form a new political party within any county shall file such petition with the County Clerk.

It is logistically impossible for the HWP to comply with the complete slate requirement as it is interpreted by objectors. Candidates for

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modified on denial of rehearing, August 22, 1990), and upheld on petition for review as to the issue of the new judgeship in its revised opinion issued August 22, 1990.

[33]So created by Ill.Const. (1970) Art. VI, 2.

[34]*See, e.g., Anderson v. Selmeider*, 67 Ill.2d 165 (1977) (dissenting opinion).

judge must file petitions with the State Board of Elections in Springfield. The HWP county candidates filed with the County Clerk in Chicago.

Thus, the motion to strike and dismiss the objection that the HWP failed to field a complete slate under §10-2 is granted.

CONCLUSION

Since the objectors have failed to demonstrate cause to find the nomination papers of the HWP candidates for county office or city commissionerships invalid, the objections as to those candidates are overruled and those candidates' names as well as the party designation, shall be placed on the November, 1990 general election ballot.

Since the objectors have demonstrated cause to find the nomination papers of the HWP candidates for suburban commissionerships and Metropolitan Water Reclamation District offices invalid, the objections are sustained, and those candidates' names and offices shall not be placed on the November, 1990 general election ballot.

Dated this 29th day of August, 1990 at Chicago, Illinois:

COOK COUNTY OFFICERS ELECTORAL BOARD

/S/ Stanley T. Kusper, Jr.
Honorable Stanley T. Kusper, Jr., Chairman

/S/ Ernesto D. Borges, Jr.
Ernesto D. Borges, Jr., Member

Concurring in Part and Dissenting in Part:

/S/ Aurelia M. Pucinski
Honorable Aurelia M. Pucinski, Member[35]

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[35] I dissent as to Parts III and VII of the opinion and accordingly also to the Conclusion.

Member Pucinski, dissenting as to Parts III and VII of the Board's opinion and as to the Conclusion:

Dissent as to Part III (Use of The Name "Harold Washington Party")

I concur with the Board's entire opinion, except as to Parts III and VII, and accordingly dissent from the conclusion. I respectfully dissent from that portion of the Board's decision granting the candidates' motion to dismiss the allegations regarding the use of the name "Harold Washington Party".

The Harold Washington Party became an established party in the City of Chicago in April, 1989, when Timothy C. Evans received more than 5% of the vote for Mayor in that election. Section 10-5 of the Election Code plainly states that the name of a new political party shall not bear the same narne as, nor include the narne of any established political party as defined in Article 10. As the majority indicated, the plain purpose of this statute is to prevent voters from being misled into believing that the new political party is officially and legally linked to the previously-established "new" political party.

The Election Code contains a complicated scheme governing the formation and continuation of political parties. This plan protects citizens from mistakenly believing that certain candidates espouse the views of parties to which they are not affiliated, and further promotes political continuity and party cohesiveness.

In my view, the testimony of Timothy C. Evans is of no value in determining the propriety of the use of the name "Harold Washington Party". While Mr. Evans was the only candidate of the HWP, the only

power he earned by that distinction was the ability to appoint interim party officers. §10-2. Those officers, in turn, not Mr. Evans, have the powers conferred by law upon the established party committeeman. These powers include the power to manage and control the affairs of the new party and such customary powers as conferring the party's endorsement on qualified candidates. Mr. Evans failed to appoint such provisional committeemen so that such power could be lawfully exercised. Having failed in this first step to formalize an established political party structure, the HWP and Evans attempt to argue some type of constitutional deprivation if the HWP is not on the ballot after the "blessing" by the person who was the only candidate of the party but has no official or statutory designation. The established Chicago HWP must take the necessary statutory steps to organize before any one person can proclaim themselves the "chairman" or party leader.

The language of the statute is clear. The name of the new party **"shall"** not include the name of an established party. The statute classifies this as a mandatory **"prohibition"**, not merely as a directory request. In fact the word "shall" in this very section has been held to be mandatory by the Appellate Court. *Serwinski v. Board of Election Commissioners*, 156 Ill. App.3d 257 (1987). Thus, I would find that the candidates may not use the name "Harold Washington Party". The courts have taught us that this statutory prohibition may be enforced simply by striking the candidates' party label and permitting them to run with no label. *Ballentine v. Bardwell*, 132 Ill.App.3d 1033 (1985). I find this to be the appropriate remedy here, and would deny the motion to dismiss this objection and find the nomination papers to be partially invalid by striking the party name.

Dissent as to Part VII

(The Necessity to Include Judicial Candidates On The Slate)

I would sustain the objection to the HWP county and city candidates that failure to include judicial candidates violated the complete slate requirement. Thus, I would find these nomination papers invalid as well.

Section 10-2 of the Election Code requires that where a petition to form a new political party within a political subdivision is filed, it must contain a component petition for each district contained in that subdivision from which an officer is to be elected. Cook County is both a political subdivision and a unit of local government. Ill.Const. (1970) Art. VII, §1; Election Code § 1-3(6).

Section 1-3(14) of the Election Code defines "district" as including "judicial districts" and "judicial circuits" . The HWP petitions fail to contain certain candidates to be elected at-large by the voters of all Cook County and by no other voters--the judicial candidates. Similarly, the Chicago component fails to list Chicago-only judicial candidates, although precisely the same voters will select those candidates.

Article VI of the Illinois Constitution provides that Supreme, Appellate and certain Circuit Court judges shall be elected on the entire County of Cook.

The Supreme Court's most recent review of the complete slate requirement, *Anderson v. Schneider*, 67 Ill.2d 165 (1977), lends support to this interpretation. Although the court permitted the candidates to remain on the ballot even though one member of the slate was disqualified, both the majority and dissent found that the statute did require that at least a "complete list of candidates" be filed.

HWP argues that since judges serve in a state office, their presence on a complete county slate may be disregarded. This argument is misplaced. The statute plainly calls for a list of candidates for "all offices to be filled in the political subdivision at large". Clearly, judges to be elected in the Cook County Judicial Circuit are such officers. The HWP conveniently fails to focus on pertinent language of the statute which states that persons seeking to form a new political party in a judicial district or in any other district or in any other political subdivision (other than a municipality) not entirely within a single county, must file with the State Board. [Emphasis added]. Thus, the HWP properly filed with the County Clerk. It would not have been a burden to add the names of the appropriate judicial candidates from the appropriate voting district (county wide, city only, suburban only) to the list of candidates on the HWP petitions.

For these reasons, I would sustain the objection and find the HWP nomination papers invalid in their entirety, as to the party. However, the individuals have filed sufficient signatures to remain on the ballot as individuals.

/S/ Aurelia M. Pucinski

Honorable Aurelia M. Pucinski, Member